

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DANIEL BEMISS,

Petitioner,

v.

9:23-CV-1249
(GTS/TWD)

SUPERINTENDENT, Clinton Corr. Fac.,

Respondent.

APPEARANCES:

DANIEL BEMISS, 20-A-0611

Petitioner, *Pro Se*

Clinton Correctional Facility

P.O. Box 2001

Dannemora, New York 12929

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Counsel for Respondent

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MARGARET A. CIEPRISZ, ESQ.

MATTHEW B. KELLER, ESQ.

Assistant Attorneys General

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this *habeas corpus* proceeding filed by Daniel Bemiss (“Petitioner”) against the Superintendent of Clinton Correctional Facility (“Respondent”) pursuant to 28 U.S.C. § 2254, are (1) Respondent’s motion to dismiss Petitioner’s Petition for untimeliness, and (2) United States Magistrate Judge Thérèse Wiley Dancks’ Report-Recommendation recommending that Respondent’s motion be granted, the Petition be denied and dismissed, and that no certificate of appealability be issued because Petitioner has failed to

make a “substantial showing of the denial of a constitutional right” pursuant to 28 U.S.C. § 2253(c)(2). (Dkt. Nos. 12, 17.) Petitioner has not filed an Objection to the Report-Recommendation, and the time in which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Dancks’ thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Dancks employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. (Dkt. No. 17.) As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein, Defendant’s motion to dismiss is granted, Petitioner’s Petition is denied and dismissed, and no certificate of appealability shall be issued.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Dancks’ Report-Recommendation (Dkt. No. 17) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

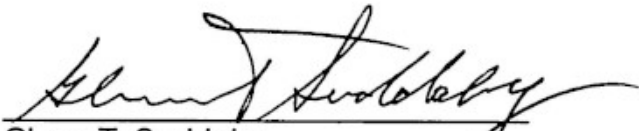
ORDERED that Respondent’s motion to dismiss (Dkt. No. 12) is **GRANTED**; and it is further

ORDERED that Petitioner’s Petition for a writ of *habeas corpus* (Dkt. No. 1) is **DENIED** and **DISMISSED**.

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a “clear error” review, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) (“I am permitted to adopt those sections of [a magistrate judge’s] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotation marks omitted).

The Court declines to issue a certificate of appealability because Petitioner has failed to make a “substantial showing of the denial of a constitutional right” pursuant to 28 U.S.C. § 2253(c)(2).

Dated: November 15, 2024
Syracuse, New York


Glenn T. Suddaby
U.S. District Judge